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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,940	07/14/2003	M. Adrian Michalick	19930-001410	6845
20350	7590	09/20/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			LESTER, EVELYN A	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,940

Applicant(s)

MICHALICEK, M. ADRIAN

Examiner

Evelyn A. Lester

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 7, 8, 14, 15 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7, 8, 29-31, 34 and 38-42 is/are rejected.
- 7) ☒ Claim(s) 4, 14, 15, 32, 33 and 35-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: There is a typographical error on line 3. The term "later" should be corrected to ---layer---. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 7, 8, 29, 20, 31, 34, 38 and 40-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Meier et al (U.S. Patent 6,147,790).

Meier et al is interpreted as disclosing the claimed invention, as noted for example in Figure 6 and its accompanying text, wherein Meier et al's invention includes a base (104), a first conductive layer overlying a portion of the base (612), a flexure assembly operably coupled to the base (314), and a beam layer (102) overlying and coupled to the flexure assembly, and is adapted to rotate relative to the base.

With respect to claims 7, 8, 34 and 3, please note Figure 6, for example.

With respect to claims 29 and 38, please note at column 3, the Summary of the invention, especially at lines 42-43 regarding claim 29.

With respect to claims 40-42, please column 7, line 18 to column 8, line 15, for example.

4. Claims 1, 31, 34 and 38-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Swart et al (U.S. Patent 6,025,951).

Swart et al is interpreted as disclosing the claimed invention, as noted for example in Figures 2b, 3a-3c and 6a-6c, and their accompanying text, wherein Swart et al's invention includes a base (46), a first conductive layer overlying a portion of the base (48 and/or 50), a flexure assembly operably coupled to the base (40), and a beam layer (42) overlying and coupled to the flexure assembly, and is adapted to rotate relative to the base.

Terminal Disclaimer

5. The terminal disclaimer filed on 7-5-05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,608,712 B2 has been reviewed and is accepted. The terminal disclaimer has been recorded.

6. It should be noted by the Applicants that the obviousness-type double patenting rejection has not been repeated in this office action due to the filing of the terminal Disclaimer, which overcomes the rejection.

Allowable Subject Matter

7. Claims 4, 14, 15, 32, 33 and 35-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims are being indicated as allowable in light of the Terminal Disclaimer Filed on 7-5-05.

Response to Arguments

8. Applicant's arguments, see Remarks filed on 7-5-05, with respect to the rejection(s) of claim(s) 1, 7 and 8 under 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Meier et al (U.S. Patent 6,147,790) and Swart et al (U.S. Patent 6,025,951).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. By deleting the phrase "for steering light," from independent claims 1 and 31, this broadened the scope of the claimed invention to include non-optical structures having the same elements, thereby making a significant change to the claims and the search.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn A. Lester whose telephone number is (571) 272-2332. The examiner can normally be reached on subject to an increased flex schedule, M-F, 10-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Evelyn A. Lester
Primary Examiner
Art Unit 2873